IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.53 OF 2005

IN

NOTICE OF MOTION NO.3787 OF 1998

IN

SUIT NO.993 OF 1997

Kutubuddin A. Lakdawala ...Petitioner

v/s

Asgar A. Lakdawala and ors. ...Respondents

Mr T.G. Vora i/b M/s Tamhane and Co. for Petitioner.

Mr J.V. Parmar for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 7TH MARCH 2007.

P.C. :-

1. By this petition, the petitioner alleges that the respondent Nos.1 to 5 have wilfully disobeyed the order dated 18th November 1998 passed by this Court in notice of motion No.3787 of 1998. Paragraph 2 of that order is relevant which reads as under :-

> "2. The learned counsel appearing for the defendants states that the defendants are in possession of the property viz. Fallis Mansion, 77, Chandanwadi, Mumbai 400 002. He submits that the entire property is occupied by the tenants. The learned counsel states that the defendants shall maintain accounts of the rent received from the tenants and the accounts would be filed quarterly before this Court with a copy to the plaintiff. The learned counsel further states that the defendants shall not dispose off, alienate, part with possession or transfer tenancies of the above referred property without obtaining leave of this Court. Statement is accepted. In view of this statement, as the interest of the plaintiff is protected, it is not necessary to pass any interim orders. Notice

of motion is disposed off."

. Thus, by this order, apart from other things, the respondent Nos.2 to 5 had undertaken not to transfer tenancy in the property to which the motion relates, viz. Fallis Mansion, 77, Chandanwadi, Mumbai 400 002 without seeking leave of the Court. According to the petitioner, contrary to this order, in total disobedience of that order, the respondent Nos.2 to 5 have transferred tenancy of room No.9 of the said premises. An affidavit has been filed in this petition by the respondent No.2 dated 5th August 2005 wherein he states that tenancy of room No.9 was transferred in favour of respondent No.6 on 1st April 2004. At this juncture, it may be mentioned that at the outset, the learned counsel appearing for respondent Nos.1 to 5 stated that it is only respondent No.2 who is responsible for transferring tenancy of room No.9 and that other respondents are not responsible for the same. So far as the petitioner is concerned, the petitioner states that the respondent No.6 was not a party to the civil suit, therefore the petitioner does not press this contempt petition against the respondent No.6. Thus, in the affidavit dated 5th August 2005, the respondent No.2 admits that on 1st April 2004 he transferred tenancy of room No.9 in favour of respondent No.6. After show cause notice was issued, an affidavit has been filed on

behalf of the respondents by Asgar A. Lakdawala. He states that he is filing this affidavit on behalf of the respondent Nos.2 to 5. In this affidavit also, it is admitted that before the Court, the learned counsel appearing for respondent Nos.1 to 5 had made the statement that the respondents will not transfer tenancies without seeking leave of the Court. It is also an admitted position that the transfer of tenancy of room No.9 was effected contrary to the undertaking given to the Court, but according to the respondent Nos.1 to 5, the transfer came to be effected because of mistake of the respondents. The mistake according to the respondents was that according to them, an undertaking given to the Court does not amount to an order of injunction. One defence has been raised on behalf of the respondents viz. that the petition is barred by section 20 of the Contempt of Courts Act 1971 because according to them, the transfer of tenancy was effected on 1st April 2004 whereas this contempt petition has been lodged on 15th June 2005 and therefore, according to the respondents, it is barred by section 20 of Contempt of Courts Act 1971. I have heard learned counsel appearing for both the sides. The order passed by the Court is quoted above. There is a clear undertaking given in that order that the respondent Nos.1 to 5 shall not transfer tenancies without seeking leave of the Court. In paragraph 5 of the affidavit

filed on behalf of the respondent Nos.1 to 5, they have stated thus :-

> "I admit that my learned Advocate did make a statement to the effect that the defendants shall not dispose off or alienate or part with possession or transfer the tenancies and not an undertaking as alleged. i say and submit that the said transfer took place on account of a total mistake on the part of the defendants who honestly believed that since there was no injunction or undertaking in any of the three motions and three appeals, totalling six proceedings, in all they were not injuncted from effecting any transfer particularly when the said transfer was with the knowledge and with the implied consent of the petitioner since the transfer was being effected by his own erstwhile partner and close friends."

. It is thus clear from the above statements that the respondents do not dispute that they have effected transfer of tenancy in violation of Court's order but according to them, they effected the transfer because they were under the impression that as there is no order restraining them from effecting transfer of

tenancy in six other proceedings, there is no order in this proceeding also. How they formed that impression is not explained by them. They do not say that they were not aware of the pendency of the suit in which that notice of motion was taken out. The order is dated 18th November 1998, the transfer is effected on 1st April 2004. Therefore, if admittedly the respondents were aware of the pendency of the suit, it is expected of them to make sure when litigation is admittedly pending that there is no order against them restraining them from effecting transfer. If they had taken care which is expected from every litigant, they would have come to know that there is an order restraining them from effecting transfer of tenancy. What is pertinent is that there is no absolute ban on transfer of tenancy, transfer of tenancy is also permitted, the only requirement is that they have to seek leave of the Court. Therefore, if there were compelling reasons for effecting transfer and if according to them the petitioner was also consenting to it, all that they were required to do was to move the Court for seeking leave of the Court. One does not find any explanation given in any of the affidavit why the respondents did not move the Court seeking leave of the Court to effect the transfer. Even assuming that when they effected he transfer, they were not aware of the existence of the order, surely they became aware of the existence of the

order after this contempt petition was served on them. it is an admitted position before me that the respondent No.2 received an amount of Rs.10,00,000/- for effecting the transfer. In my opinion, had the transfer been effected because of any genuine mistake, the moment they became aware that they have effected transfer in breach of the Court's order, the least they could have done was to seek leave of the Court ex-post facto and deposit the amount of Rs.10,00,000/- voluntarily which according to them they have received. The respondents took no such steps. The conduct of the respondents therefore shows that the transfer did not come to be effected because of any misunderstanding or mistake, but it was deliberately done by them in willful violation of the Court's order. So far as the contention raised on behalf of the respondent No.2 that because of the provisions of section 20 of the Limitation Act, the petition is barred and no cognizance of that petition be taken is concerned, the petitioner has taken the stand in this petition that he came to know that the transfer has been effected in October 2004 and thereafter he filed the petition in June 2005. The respondents contend that the petitioner was aware that the transfer is being effected when the transfer was effected but they have not produced any evidence in support of their claim that when the transfer was actually effected in April 2004, the petitioner was aware of the same. Thus, in the

absence of any evidence being produced and as the transfer was effected by the respondent No.2 and that fact was within the special knowledge of the respondent No.2, I see no reason to disbelieve the statement of the petitioner that he came to know about the transfer only in October 2004 and therefore, in view of the law laid down by the Supreme Court in its judgment in the case of Pallav Sheth v/s Custodian and ors., reported in AIR 2001 SC 2763, it cannot be said that this Court cannot entertain this petition in views of the provisions of section 20 of the Contempt of Courts Act. Thus, it is clear to my mind that the fact that the respondent No.2 has wilfully violated the order made by this Court referred to above is established beyond doubt and therefore, he is guilty of having committed civil contempt of this Court for which he is liable to be punished. I have heard learned counsel appearing for the respondent No.2 on the aspect of punishment also. The respondent No.2 has tendered an apology but as observed above, the conduct of the respondent No.2 shows that the apology is not genuine. Had the apology been genuine, they would have moved the Court even after effecting transfer and sought leave of the Court to effect the transfer and deposited the amount received by them, but none of this was done. Therefore, the apology cannot be accepted. Considering the conduct of the respondent No.2 and considering the growing tendency of

the litigants not to obey the orders of the Court to take advantage of the delays of the system, in my opinion, the respondent No.2 will have to be sentenced to undergo imprisonment. Therefore, the respondent No.2 is sentenced to undergo simple imprisonment for a period of two months. He is directed to pay fine of Rs.2,000/-. The respondent No.2 shall pay as and by way of cost of this petition Rs.15,000/- to the petitioner.

Contempt petition is disposed off.

2. At the request of the learned counsel appearing for respondent No.2 that part of the order sentencing respondent No.2 to undergo imprisonment is stayed for a period of six weeks subject to the condition that within two weeks from today, the respondent No.2 shall deposit the amount of fine and pay cost to the petitioner.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.